

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



INDIANA GOVERNMENT CENTER NORTH
100 NORTH SENATE AVENUE N1058(B)
INDIANAPOLIS, IN 46204
PHONE (317) 232-3777
FAX (317) 974-1629

TO: All County and Township Assessors

FROM: Courtney L. Schaafsma, Commissioner

RE: Legislative Changes Affecting Property Tax Exemptions

DATE: July 29, 2015

This memorandum addresses legislative changes concerning property tax exemptions. Please note that this memorandum is intended to be an informative bulletin; it is not a substitute for reading the law.

I. Property Tax Exemption Termination

The Department of Local Government Finance (“Department”) reminds assessors that various statutes governing property tax exemptions were amended in 2014 and that several of these amendments will be taking effect for 2016. The following addresses these changes, as introduced by Senate Enrolled Act 420-2014 (the Department first issued a memorandum concerning these changes in 2014):

- a. **(IC 6-1.1-11-1.5):** An award of a property tax exemption for a particular assessment date **beginning after December 31, 2015 (or December 31, 2016 for mobile homes assessed under IC 6-1.1-7)** must be based on the property’s eligibility for the exemption on that assessment date. An act occurring after the assessment date, including a change in:
- (1) use, value, character, or ownership of the tangible property; or
 - (2) the age, disability, or income of any owner, contract buyer, or possessor of tangible property;
- does not affect the eligibility of the tangible property for an exemption for that assessment date.

Example: A property tax exemption is applied to a church’s building for the January 1, 2016, assessment date. On November 1, 2016, the church sells the building to a startup, for-profit business. The exemption on that building remains in place for the January 1, 2016 assessment date (2016 Pay 2017). The exemption in the church’s name is removed for the January 1, 2017 assessment date.

- b. **(IC 6-1.1-11-3):** For an assessment date in a year **beginning after December 31, 2015**, the deadline to submit a property tax exemption application to the county assessor is April 1 of the year containing the assessment date. If the county property tax assessment board of appeals (“PTABOA”) denies the application, it has no later than April 25 to provide notice to the taxpayer.

- c. **(IC 6-1.1-11-3.5): *After December 31, 2015***, a non-profit corporation that receives an exemption for a particular year but which becomes ineligible for the following year must notify the county assessor before April 1 of the year for which it becomes ineligible. Also, ***after*** December 31, 2015, if part or all of a non-profit corporation's property becomes ineligible due to a change in use, the non-profit corporation must notify the county assessor before April 1.

II. Common Area Exemption (IC 6-1.1-10-37.5)

On May 4, 2015, Governor Pence signed into law House Enrolled Act 1388-2015 ("HEA 1388"), which introduces a new statute governing the assessment of common areas. This statute took effect upon passage of HEA 1388 and thus affects assessments beginning January 1, 2016.

A. Section 5 of HEA 1388 introduces IC 6-1.1-10-37.5, which does the following:

1. Defines "common area" to mean a parcel of land, including improvements, in a residential development that
 - (1) is legally reserved for the exclusive use and enjoyment of all lot owners, occupants, and their guests, regardless of whether a lot owner makes actual use of the land;
 - (2) is owned by:
 - (A) the developer, or the developer's assignee, provided such ownership is in a fiduciary capacity for the exclusive benefit of all lot owners in the residential development, and the developer has relinquished all rights to transfer the property other than to a person or entity that will hold title to the property in a fiduciary capacity for the exclusive benefit of all lot owners;
 - (B) each lot owner within the residential development, equally or pro rata; or
 - (C) a person, trust, or entity that holds title to the land for the benefit of all lot owners within the residential development;
 - (3) cannot be transferred for value to another party without the affirmative approval of:
 - (A) all lot owners within the residential development; or
 - (B) not less than a majority of all lot owners within the residential development, if majority approval is permitted under the bylaws or other governing documents of a homeowners' association, or similar entity;
 - (4) does not include a Class 2 structure (generally meaning a townhouse or a building or structure that is intended to contain or contains only one dwelling unit or two dwelling units or an outbuilding for such a structure, including a garage, barn, or family swimming pool, [see IC 22-12-1-5]); and
 - (5) is not designed or approved for the construction of a Class 2 structure.
- Common area includes, but is not limited to, a lake, pond, street, sidewalk, park, green area, trail, wetlands, signage, swimming pool, clubhouse, or other features or amenities that benefit all lot owners within the residential development.
2. Defines "lot owner" as an individual or entity that is the owner of record of a lot, parcel, tract, unit, or interest within a residential development, upon which a Class 2 structure is or will be constructed.
 3. Defines "residential development" to mean a parcel of land that is subdivided into lots, parcels, tracts, units, or interests
 - (1) all of which, except for a common area, include an existing Class 2 structure, or are designated for the construction of a Class 2 structure; and

- (2) each of which is encumbered by substantively identical restrictive covenants concerning one or more servient estates located within the boundaries of the original undivided parcel, or other governing document of record.
 4. Provides that a common area is exempt from property taxation, provided that the common area easements and covenants restricting the use and conveyance of common areas to lot owners are recorded, and notice is provided, to the appropriate county or township assessor.
 5. Provides that a county or township assessor shall designate an area as a common area after
 - (1) receiving notice as described above; and
 - (2) determining that the area is a common area.
 6. Provides that if a county or township assessor determines that the area is not a common area, or determines that the area fails to meet the requirements described above, then the county or township assessor must send a written statement to the owner of the common area not later than 30 days after receiving the notice described above. The written statement must contain
 - (1) the specific provisions on which the county or township assessor based the determination; and
 - (2) a statement that the owner of the common area has 30 days to address these specific provisions, and to establish the area as a common area that meets the requirements described above.
 7. Provides that if a county or township assessor fails to send a written statement to the owner of a common area as required, then the area for which notice was provided must be considered a common area.
 8. Provides that once an area has been designated a common area, no subsequent refileing of a common area property tax exemption is required unless an area designated as a common area subsequently fails to meet the definition of a common area.
 9. Provides that a common area may be created at any time during or after a residential development is created. For purposes of this exemption, a common area may be created or expanded after the initial approval of the residential development only if that creation or expansion of the common area
 - (1) is approved by:
 - (A) all lot owners within the residential development; or
 - (B) not less than a majority of all lot owners within the residential development, if majority approval is permitted under the bylaws or other governing documents of a homeowners' association, or similar entity; and
 - (2) receives any approvals required by the county or municipality in which the common area is located.
 10. Provides that an owner of an area may obtain review by the PTABOA of a county or township assessor's determination concerning the status of property as a common area.
- B. Section 15 of HEA 1388 amends IC 6-1.1-15-1 to include "a determination concerning a common area under IC 6-1.1-10-37.5" among the bases upon which a taxpayer may seek review by the PTABOA. This amendment was also effective upon passage of HEA 1388.

The Department believes that a person does not need to file a Form 136 to obtain this exemption. Indiana Code 6-1.1-10-37.5 is specific that the covenants and easements must be recorded and "notice" given to the assessor. This notice could probably just take the form of a letter. The problem with requiring a Form 136 is that in a situation where the common area is owned pro

rata by multiple lot owners, it is unclear who would file the Form 136. Moreover, IC 6-1.1-10-37.5 tasks solely the *assessor* with determining if the property qualifies. If a person had to file a Form 136, this would mean that the PTABOA determines the property's eligibility, which isn't what statute provides for.

The Department is aware that there are assessors who are already giving some common areas a \$0.00 assessment. For 2016, the Department recommends that the owner(s) of common areas already being assessed at \$0.00 ensure that the covenants and easements are recorded and give the assessor notice.

III. Exemption of Basements in Special Flood Hazard Areas (IC 6-1.1-10-16.8)

Section 11 of Senate Enrolled Act 436-2015 ("SEA 436"), which was signed by Governor Pence on May 6, 2015, introduces IC 6-1.1-10-16.8, which provides for an exemption for select basements. The statute was effective upon passage of SEA 436.

This statute applies to a dwelling or other building that is situated in a special flood hazard area as designated by the Federal Emergency Management Agency (FEMA) in which the mandatory purchase of flood insurance applies.

The basement of a dwelling or other building described above is exempt from property taxation if

- (1) the basement floor level has been elevated to mitigate the risk of flooding; and
- (2) as a result, the basement is rendered unusable as living space.

Contact Information

Questions may be directed to General Counsel Mike Duffy at (317) 233-9219 or mduffy@dlgf.in.gov.